



Appeal Decision

Site Visit made on 15 September 2021

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2021

Appeal Ref: APP/P4605/W/20/3244542

Old Union Mill, 17-23 Grosvenor Street West, Birmingham, B16 8HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mersterbrook Limited against the decision of Birmingham City Council.
 - The application Ref 2018/00484/PA, dated 19 January 2018, was refused by notice dated 15 August 2019.
 - The development proposed a 2 storey extension to rear of original building to facilitate refurbishment to provide office floorspace (Use Class B1a), 2 new residential blocks in rear courtyard rising to 3 and 4 storeys to provide 13 apartments (5 x 1-bed, 7 x 2-bed, 1 x 3-bed), re-levelling and landscaping to form parking courtyard and communal gardens
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Decision

1. The appeal is dismissed

Procedural matters

2. On my visit I viewed the site from Old Union Mill and the surrounding public viewpoints, and also from within Flats P1, 111 and 210 in Sherbourne Lofts.

Main Issues

3. The main issues are the effect on the living conditions of neighbouring residents and whether the development would harm the significance of the listed building and any features of special architectural or historic interest it possesses.

Reasons

Living conditions

4. Old Union Mill currently comprises an older block at the front of the site facing directly onto Grosvenor Street West. Behind is a large yard, along the north-eastern side of which is a 2-storey modern wing that wraps round onto the rear boundary. A block of flats called Dakota Apartments is to the south-west of the site, again close to Grosvenor Street West. Part of the rear boundary runs along the canal, and abutting the remainder of that boundary is the side wall of Sherbourne Lofts, a former commercial building that has been converted to flats.
5. The proposal includes erecting 2 blocks of apartments behind the older building, one along the south-western boundary and the other along the north-eastern one.

6. The block on the south-western side would run up to the side wall of Sherbourne Lofts, and would be below the balcony that serves Flat (or Loft) P1 on the top floors of that complex. This new block would have no windows or balconies that would allow unacceptable overlooking of either those existing apartments or the ones in Dakota Apartments, and so would not cause a loss of privacy. Whilst there was a concern that its flat roof could assist unauthorised access to the balcony at Flat P1, I have no basis to consider this would be so.
7. Turning to the effect of this block on daylight within the adjacent flats, the distances involved and the relative aspects mean I consider the scheme would not have an adverse effect in this regard on units in Dakota Apartments.
8. Flat P1 would be above the proposed block and so would not experience any loss of light as a result. Although it would have an outlook over the block's flat roof, I am not satisfied that would be sufficiently harmful to the living conditions in Flat P1 to justify refusal.
9. However, there are 2 windows on the side elevation of Sherbourne Lofts that could be affected by this scheme. One of these is the only window serving Flat 210 and is immediately next to the boundary with Old Union Mill. It is 2-storeys high and provides light to the principle living area on the apartment's lower floor as well as to the bedroom on the upper mezzanine floor.
10. This window would be near the top of the proposed south-western block and has a southerly aspect, particularly from in the bedroom. Moreover, whilst that new block would run along much of the boundary on this side of the appeal site, it would be set in for the final 7.9m or so nearest to the Sherbourne Lofts building. Taking these factors together, I consider that any loss of daylight or sunlight in this apartment resulting from the development would not be unreasonable or unacceptable. Furthermore, the layout at Flat 210, and in particular the location of the window relative to the living space and the upper floor bedroom, mean the outlook enjoyed from within that unit is principally to the south and south-west rather than over the appeal site. Therefore, the scheme would not have an unacceptable effect on outlook in Flat 210 and would not be unduly over-dominating when inside that unit.
11. Directly beneath that window is another serving Flat 111, which again is a unit with 2 floors. However, its window is at the upper-floor level only and is the sole source of natural light for the main living areas of this apartment. Because of its limited size and the flat's depth, when I visited on a sunny afternoon, the flat was nonetheless relatively dark inside. The bedroom closest to the window was particularly so, for it received light only indirectly through a glass partition set back slightly behind the mezzanine's balcony.
12. Again, while the proposal would abut the boundary that runs to the side of this window, the set-back referred to above would be appreciated at this level too. However, this window is lower than the one to Flat 210 so the elevation of the proposed south-western block would extend further above. Moreover, assessing the scheme against the vertical sky component (VSC) results in a slight infringement in the bedroom when compared to the nationally accepted guidelines.
13. The VSC guidelines though are advisory and different targets may be used if supported by the specific circumstances of the site. Mindful of this, given the window's southerly and south-westerly aspect, and acknowledging the

relationship of the window to the living space in the flat, I consider that what is before me would not take an appreciable amount of light from that window. As a result, it would not cause unreasonable harm to whatever levels of daylight are enjoyed in the apartment at present. Furthermore, the relationship of the new block to the window means there would be no harmful loss to the outlook it provides, and no unacceptable sense of over-dominance when looking through it. The infringement of the VSC guidelines does not therefore provide a basis to resist the scheme.

14. Unlike Flat 210, Flat 111 extends beyond the main side elevation of the Sherbourne Lofts building with a terrace (accessed from the upper level of the apartment) above a kitchen (accessed from the lower floor). Although the development would result in a tall wall adjacent, the terrace would still have an open aspect to the south and so would not feel unduly enclosed. The kitchen beneath is served by a large roof light in the centre of the terrace (the second source of natural light to the unit), and I have no reason to consider the light levels to this would be materially affected.
15. Accordingly, the proposed south-western block would not adversely affect the living conditions of neighbouring residents.
16. Turning to the north-eastern block, the separation from and the relationship to Sherbourne Lofts would mean there would be no unacceptable loss of light in those neighbouring units. Moreover, the windows in the elevation facing the courtyard of the Old Union Mill would allow only oblique views from the very corners of the rooms in question towards the Sherbourne Lofts elevation that faces the canal, at a distance of some 18m or so. As a result, they would not cause any significant loss of privacy in those units. Slightly less angled views would be possible into the side windows to Flat P1 at Sherbourne Lofts but these would be at a greater distance and could still only be achieved from the corners of the rooms in the scheme, so again would not cause an unacceptable loss of privacy.
17. However, a large balcony on each of the 4 floors is on the elevation of this block facing the canal. These would sit at right angles to the Sherbourne Lofts elevation and, according to the appellant, would be some 17m away (though said by the Council to be a minimum of 13.7m). The size of these balconies, their direct access from the main living areas, their pleasant outlook over the canal and, in the case of the lower 3 floors, their covered nature, would all be factors that encouraged their regular use by residents in the units they served.
18. I have taken into account the angles involved and assumed the appellant's dimension to be the minimum. However, mindful of the balconies' possible level of usage and the large windows now in the Sherbourne Lofts development, I consider their views would allow an unacceptable loss of privacy to the existing residents of the units in the neighbouring block that faced the canal and were close to Old Union Mill.
19. I acknowledge that some screening has been introduced but that would not affect views from the majority of each balcony and so does not allay my concerns. Moreover, I recognise that a level of public access is possible along the towpaths and on the canal, while there are also large blocks of flats on the opposite bank. However, from the towpath on the same side of the canal as Sherbourne Lofts views into many of the units in that building are difficult because of the angles involved, while canal traffic and the towpath and flats

opposite are some distance away. Consequently, any loss of privacy at present is limited.

20. I also noted the nearby city centre developments brought to my attention where interface distances were low. I recognise that in many instances the separation intended for suburban schemes could well not be applicable or appropriate in this central area of Birmingham and so those distances have not been determinative in this instance. However, I nonetheless consider that maintaining appropriate living conditions for existing residents is a legitimate aim. To my mind the existing residents in Sherbourne Lofts enjoy a relatively high level of privacy due to the distances from the flats and towpaths around, and this would be harmfully compromised by the scheme. Therefore, these other cases nearby do not offer me a basis to find that the level of overlooking resulting from this development would be acceptable. Finally, I have noted a scheme allowed on the site in 2007. However, that scheme does not appear to be extant but, even if it was, from the few details provided it was slightly different to the proposal with a different balcony arrangement, and so does not lead me to change my findings.
21. Accordingly, I conclude that the north-east block would unreasonably harm the living conditions of existing residents at Sherbourne Lofts by failing to maintain adequate privacy. As such, it would conflict with one of the principles laid down in the *Places for Living* Supplementary Planning Guidance, and so would not accord with Policy 3.14C in *The Birmingham Plan*, which requires regard to be given to that document.

Effect on the listed building

22. Old Union Mill is a Grade II listed former flour mill that dates from a little over 200 years ago. Its commercial character is still apparent in its layout, scale and design, and these factors add to its significance and contribute to its special architectural and historic interest.
23. The proposal would refurbish the older building in a sensitive manner. The 2 new blocks would occupy a significant amount of the area behind. To my mind though their footprint and scale would not be so great as to represent an overdevelopment of the site, and the layout before me would maintain a sense of a courtyard at the rear. Whilst their design would be markedly different to that of the building at the front, it would not be a jarring or discordant relationship but would draw a clear distinction between the older and newer parts of the built form. These blocks would also be higher than the frontage element, but the difference would not be so great as to mean they dominated or overwhelmed that older part.
24. Accordingly, I conclude the proposal would not harm the significance of this listed building, and would not fail to preserve its special architectural or historic interest. As such, it would not conflict with guidance in the *National Planning Policy Framework*.

Planning balance

25. I appreciate that the proposal is an opportunity to bring back into use a long-vacant listed building in a deteriorating condition and this benefit weighs very much in favour of the scheme. I accept too that the scheme would be generating new office space, and would be in a highly sustainable location on

previously developed land. Improved surveillance may also reduce crime. Overall though, and mindful of the enduring and harmful impact that I have found the scheme would have on the living conditions of existing residents, I am not satisfied that the reuse of this historic building and these other benefits could not be achieved in a slightly different way that protected the privacy of those adjacent. Therefore, I consider the benefits to the historic building and the other benefits do not outweigh the adverse impacts of the proposal.

Conclusion

26. For the reasons stated I conclude the appeal should be dismissed.

JP Sargent

INSPECTOR